

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

CHRISTIAN OKAFOR
also known as
Mike,
Defendant.

CRIMINAL FILE NO.

1:11-CR-482-5-TWT

ORDER

This is a criminal case. It is before the Court on the Report and Recommendation [Doc. 240] of the Magistrate Judge recommending denying the Defendant's Motion to Vacate Sentence [Doc. 212]. The Defendant claims that he instructed his lawyers to file a notice of appeal. The Defendant's lawyers testified at an evidentiary hearing that he did not instruct either of them to file a notice of appeal. As a sort of back up argument, appointed counsel for the Defendant also claims that the lawyers were ineffective for failing to adequately consult with the Defendant regarding his right to appeal. The Defendant's arguments for not accepting as credible the sworn testimony of two officers of the Court are not persuasive. The Defendant entered into an appeal waiver as a part of his plea agreement. He admitted at the

evidentiary hearing that he knew that he could not appeal a guideline sentence. In the event, I sentenced him below the applicable guideline range and below the 50 months recommended by the Government. I reminded him that he waived his right to appeal. The Defendant now claims that he advised Mr. Friedberg that he wanted to appeal outside of the hearing of Mr. Morris. That describes a highly unlikely scenario. At the time of imposition of sentence a defendant in my courtroom is not sitting at counsel table. He will be standing at the podium in the well of the courtroom with his lawyers standing right beside him. After imposition of sentence, there is not a “huddle” at counsel table. A defendant in custody is immediately lead off by the deputies to the lockup. Any conversation between the Defendant and one of his attorneys would have been audible to the other. The parties’ subsequent behavior is all completely consistent with everyone’s understanding that the case was over and that there would be no appeal. The Defendant’s Objections to the Report and Recommendation are without merit. The Court approves and adopts the Report and Recommendation as the judgment of the Court. The Defendant’s Motion to Vacate Sentence [Doc. 212] is DENIED.

SO ORDERED, this 21 day of November, 2014.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge